IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5132 OF 2004

The State of Maharashtra .. Applicant.
Vs.
Suresh Gundurao Wandkar .. Respondent.

Mr.R.Y.Mirza A.P.P. for the applicant.
Mr.U.D.Bhat for respondent no.1.

CORAM : D.B.BHOSALE, J.

DATED : 13TH JULY, 2006

P.C.:

. Heard learned A.P.P. for the applicant and learned counsel for the State.

2. This is application seeking condonation of delay of one year and two days caused in filing criminal appeal against the judgment and order of acquittal dated 6.11.2001 by which the respondent-accused had been acquitted of the offence punishable under section 7 and 13 (1)(d) read with 13(2) of Prevention of Corruption Act, 1988. It appears from the contents of the criminal application as also from the affidavit of learned A.P.P. that the last date of filing the appeal was 15.2.2002. The concerned Public Prosecutor, Raigad submitted the papers on 16.2.2002 to the Law and Judiciary Department, Mantralaya, Mumbai. On 15.6.2002 the

State of Maharashtra issued a Government Resolution resolving to file appeal against the judgment and order of acquittal and forwarded the papers to the office of Public Prosecutor, High Court. The papers were entrusted to the concerned Additional Public Prosecutor on 20.6.2002 and the appeal came to be filed on 15.2.2003. The application seeking condonation of delay was filed on 19.11.2004. It is clear from the aforestated dates that there were two stages where the delay occurred. Firstly, from 16.2.2002 to 15.6.2002 and thereafter from 20.6.2002 to 15.2.2003. I perused the application as also the affidavit of the learned Additional Public Prosecutor. Insofar as the period from 16.2.2002 to 15.6.2002 is concerned, there is absolutely no explanation offerred as to why the Law and Judiciary Department took four months to pass resolution in the matter which had already been barred by limitation. Even the explanation offerred by the concerned Additional Public Prosecutor explaining the delay between 20.6.2002 to 15.2.2003 is also not satisfactory and deserves to be rejected outright for more than one reason. It appears that after the acquittal the respondent-accused had filed original application in Maharashtra Administrative Tribunal for redressal of his grievance. In opposition to the petitioner's original application before the Maharashtra

Administrative tribunal, an affidavit came to be filed by one Mr.N.D.Shirke, Home Department, Mantralaya, Mumbai on behalf of the State. In the said affidavit, Mr.Shirke stated that against the order of acquittal passed in criminal case the State had preferred appeal before the High Court and the said appeal was pending. The original application before the Maharashtra Administrative tribunal was filed on 11.7.2002 and it was rejected on 2.12.2002 in view of the statement made by Mr.Shirke on affidavit. Subsequently, it transpired that the statement made by Mr.Shirke was wrong and, therefore, the contempt petition was filed bearing criminal contempt petition no.18 of 2003 in this Court which was allowed holding Mr.Shirke guilty of criminal contempt under section 2(c) of Contempt of Courts, Act, 1971 for making false statement in the affidavit filed by him before the Maharashtra Administrative Tribunal in the aforestated original application bearing No.313 of 2000. It is against this backdrop the explanation offerred in the application as also in the affidavit filed by the concerned Additional Public Prosecutor must be rejected. No sufficient cause is shown to condone the delay in filing the appeal against the judgment and order of the acquittal. In the circumstances this application is rejected. Consequently, the appeal also stands dismissed as barred by the limitation.

(D.B.Bhosale, J.)